Filed 6/30/16 P. v. Hill CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. JAMELE E. HILL, Defendant and Appellant.	B262318 (Los Angeles County Super. Ct. No. TA132231)

Appeal from a judgment of the Superior Court of Los Angeles County. Allen Joseph Webster, Jr., Judge. Judgment affirmed; remanded for resentencing.

Doris M. Leroy, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson, and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

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Jamele Hill appeals his conviction and sentence arising from seven drug-related crimes and a gang enhancement claiming that (1) substantial evidence did not support that drug sale (count 1 of the information); (2) the trial court abused its discretion by sustaining the People's claim of privilege over the location of the police informant's surveillance camera; (3) substantial evidence did not support the gang enhancement; and (4) the trial court abused its discretion by allowing Hill to be handcuffed during the reading of the verdicts and at the post-trial hearings. With the exception of the sentence, we affirm.[1]

FACTS AND PROCEDURAL BACKGROUND

A. *Information*

An information filed on August 28, 2014 alleged that on October 8, 2013, Hill transported, sold, or offered to transport or sell, cocaine base (count 1).[2] The information also alleged seven counts occurring eight months later, on June 25, 2014: (1) possession of a controlled substance while armed with a firearm (count 2); (2) sale, transportation, or offer to sell cocaine base (count 3); (3) sale, transportation, or offer to sell cocaine (count 4); (4) construction, possession or use of a false compartment with intent to conceal a controlled substance (count 5); (5) possession for sale of cocaine base in an amount greater than 14.25 grams (count 6); (6) possession for sale of cocaine (count 7); and (7) possession of a firearm by a felon convicted of two prior felonies (count 8).[3]

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[1] Respondent concedes, and we agree with, the merits of Hill's claim regarding sentencing.

[2] Count 1 alleged a violation of Health and Safety Code section 11352, subdivision (a). Unless otherwise noted, all statutory references are to the Health and Safety Code.

[3] Count 2 alleged a violation of section 11370.1, subdivision (a); counts 3 and 4 alleged a violation of section 11352, subdivision (a); count 5 alleged a violation of section 11366.8, subdivision (a); count 6 alleged a violation of section 11351.5 and Penal Code section 1203.073, subdivision (b)(5); count 7 alleged a violation of section 11351; and count 8 alleged a violation of Penal Code section 29800, subdivision (a)(1).

The information further alleged that counts 1, 2, 3, 4, 6, 7 and 8 were committed for the benefit of, at the direction of, or in association with a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(A)). As to counts 2 through 8, the information alleged that Hill was out on bail, or release, when he committed them and thus in violation of Penal Code section 12022.1, and that Hill had one prior conviction, within the meaning of section 11370.2, subd. (a).

Hill pleaded not guilty and denied the special allegations. Pursuant to the People's motion, the court dismissed count 2. The case proceeded to trial on the remaining counts.

B. *Prosecution Evidence*

1. *Sale of Cocaine Base (Count 1)*

On October 8, 2013, Los Angeles Police Department (LAPD) Officer Edward Kellogg, assigned to narcotics enforcement detail, was monitoring the Nickerson Gardens housing project, specifically the location of 1702 East 112th Street in Los Angeles. He noticed significant pedestrian traffic in front of the residence and several bikes parked on the sidewalk. Officer Kellogg testified that these observations were consistent with narcotics trafficking, and that he decided to use a non-confidential informant to attempt to purchase narcotics from the site. He recruited a former drug user who had worked as a non-confidential informant for the LAPD and the Federal Bureau of Investigations for over nine years at the time of trial. She had conducted over 300 narcotics purchases, many within Nickerson Gardens, and was paid $150 in cash for each successful purchase.

An undercover detective, Michael Owens, sat in an unmarked vehicle in front of the location to observe the transaction, while Officer Kellogg, who parked around the corner a block away, listened to the transaction from a concealed audio-video recorder worn by the informant.

The informant testified that when she approached the door to the residence and stated her business someone inside directed her to the side window of the building. As she approached the side, she saw that a shoe was attached to a rope or string inside an apartment on the second floor of the building. It was hanging out of the window. She put money in the shoe, pulled on the attached rope as a signal that the money was

inside, and the shoe was hoisted up. When the informant was below the window, she heard a female voice call out "something like" "Melly Mel," to someone in the apartment. Thereafter a man stuck his head out of the window, and the informant looked up and saw his face. Then the shoe was let down to her. The money she had placed inside the shoe had been exchanged for an off-white solid, resembling "rock" cocaine, wrapped inside a tissue. The informant removed the "rock," walked around the corner with it, and gave it to Officer Kellogg. The parties stipulated that it weighed .27 grams and contained cocaine in base form.

Less than an hour after making the drug buy, Officer Kellogg showed the informant a photograph of Hill, and she identified him as the man who had put his head out of the window.

Detective Owens, who observed the transaction from across the street, confirmed the informant's testimony, although he did not see anyone's face in the window. He did, however, hear someone shout "Melly," and he was acquainted with Hill, and knew that his nicknames were "Melly" and "Melly Mel," and was not aware of another "Melly" or "Melly Mel" in Nickerson Gardens.

The surveillance video was played for the jury. The video, however, does not show Hill's, or anyone's, face at the window; indeed, it captures very little of the scene and is focused on a white stucco wall for much of the time it is recording. It does, however, contain the sound of a woman yelling "Melly Mel."

Although Officer Kellogg executed a warrant at the premises of the buy a week later, Hill was not present. Indeed, he was not charged or arrested for his drug sale to the informant (count 1) until eight months later, in connection with counts 3 through 8 outlined below.

2. *Counts 3 Through 8*

LAPD Officer Erik Shear was assigned to the Nickerson Gardens housing development for 13 years and was specifically assigned to investigate the Bounty Hunter Bloods gang, who claimed Nickerson Gardens and its perimeter as their territory. He was

involved in hundreds of police investigations involving narcotics sales inside Nickerson Gardens and had observed Hill at Nickerson Gardens on more than 100 occasions.

On June 25, 2014, Officer Shear was involved in the execution of a search warrant that began with the surveillance of Hill. Officer Shear saw Hill leave his mother's residence at Nickerson Gardens, where Hill frequently stayed, in a Buick Lacrosse which was registered to Hill's mother but, according to Officer Shear, was primarily driven by Hill. Officer Shear had not observed any other person driving that car. He detained Hill and drove Hill and the Buick back to his mother's residence. Pursuant to the warrant, Officer Shear and his team then searched the residence. They found a small amount of white powder cocaine, two electronic scales and two razor blades in the kitchen. The recovered electronic scales were the type commonly associated with drug sales. In the bedroom, the officers found numerous documents in Hill's name and an empty box of .40 caliber ammunition. They also found red clothing and hats in Hill's size. (Bounty Hunter Bloods gang members frequently wear red to identify themselves.)

While searching the Buick, also pursuant to the warrant, Officer Shear found a custom-built, hidden compartment in the bottom of the passenger seat. Inside the compartment, he found a loaded Glock .40 caliber handgun with an extended 30-round magazine and 19 rounds of live caliber ammunition, $8,500 in cash, approximately 87 grams of rock cocaine and 63 grams of powder cocaine. The combined street value of the cocaine was over $5,000.

Officer Shear opined that the quantity of drugs found in the compartment was a strong indication of possession with intent to sell, especially in proximity to the amount of cash recovered. The presence of a firearm was significant because it is common for drug dealers to possess firearms to protect their drugs and money. The hidden compartment showed sophistication and a willingness to spend a significant sum to protect large amounts of drugs and cash.

The parties stipulated that prior to June 25, 2014, Hill had been convicted of a felony.

3. *Gang Evidence*

LAPD Officer Francis Coughlin, the prosecution's gang expert, testified that Nickerson Gardens was the established territory and home of the Bounty Hunter Bloods gang, who used it as "their hub where they can conduct their business, hold their guns, purchase their narcotics, and sell them." The gang has over 2,000 documented members, with 600 to 800 active members, the majority of whom live in Nickerson Gardens or the surrounding areas, use or wear the color red, and have specific hand symbols. The gang established and held its territory through violence with the objective of discouraging other gangs from challenging its "absolute monopoly" over Nickerson Gardens and to frighten residents from opposing them or cooperating with authorities.

The gang maintained exclusive control over the drug trade in its territory. Members of the gang sold narcotics 24 hours a day and, at any given time, narcotics were sold from three to five locations simultaneously. In operating these locations, the gang members usually worked in groups of two or three, with different shifts taking over throughout the day.

Officer Coughlin had known Hill for over a decade and had spoken with him in Nickerson Gardens on numerous occasions. He testified that Hill used the nickname "Melly Mel," and opined that Hill was a member of the Bounty Hunter Blood gang. Officer Coughlin then described the images of Hill portrayed in a set of photographs shown to the jury, which depicted Hill in gang-related garb, including red bandanas, red shoelaces and a red shirt with the words "5 Line" on it, a term relating to Bounty Hunter Bloods' gang territory.

Officer Coughlin further opined that narcotics sales benefitted the gang because "they profited" from the activity and it added to the "stranglehold that they [had] over that neighborhood." The business of narcotics sales, employed "hundreds of its gang members annually" and the narcotics trade was "extremely profitable" for the gang and allowed them to purchase guns, eliminate competition, and put the community of Nickerson Gardens in a position of fear, which allowed the gang to remain in control.

C. *Defense Evidence*

Jermail Morris, who had lived in Nickerson Gardens for 40 years, testified that his own nickname was "Melly," and that he knew five or six additional people in Nickerson Gardens with the same or similar nickname. Morris testified that he was a member of the Bounty Hunter Bloods gang and sold narcotics.

Damu Barnes, Hill's older brother, testified that their mother owned the Buick Lacrosse, and that Barnes had driven the car 30 to 40 times. Additionally, his mother, sister, and other friends in the neighborhood drove the car. Hill was, therefore, not the exclusive driver of the car.

Shekeya Gardner, Hill's sister, testified that she lived in Nickerson Gardens with their mother. Her mother owned the Buick Lacrosse for a year and a half and loaned it to many friends and neighbors to drive. On cross-examination, Gardner admitted that she sometimes called Hill, "Mel" or "Melly."

D. *The Verdict and Sentencing*

On December 12, 2014, in the presence of the jury, Hill, counsel and the court, the foreperson announced that the jury had reached verdicts as to all counts. On the court's instruction, the court clerk then began to read the verdicts. After the clerk read the guilty verdict on count 1, law enforcement personnel in the courtroom handcuffed Hill. The clerk continued to read the guilty verdicts, and defense counsel requested that the jurors be polled. The jurors were then polled, the court directed the clerk to record the verdicts, and the jury was excused. Only then did defense counsel bring up the issue of the handcuffing, stating that "it's a little unusual while the jury is still present to be cuffing the defendant up in front of the jury. I can't say it was prejudicial to the verdict because they had already reached a verdict, but it is unusual." The court responded that it is the sheriff department's policy to handcuff the defendant in every case when the jury reached a guilty verdict, noting that "[w]e, the bench officers, don't get involved in the sheriff's custody."

In a motion for new trial, Hill argued that the application of handcuffs in the presence of the jury, before all of the verdicts had been read and the jury polled, was

error and might have discouraged jurors from changing their minds during polling. The court denied the motion.

On February 25, 2015, Hill admitted the out-on-bail allegation and the prior conviction allegations, and the court sentenced him to an aggregate term of 13 years 4 months in state prison. On count 3, the principal count, the court imposed the middle term of four years, plus three years for the gang enhancement (Pen. Code, § 186.22, subd. (b)(1)(A)), three years for the prior drug conviction enhancement (§ 11370.2, subd. (a)), and two years for the out-on-bail enhancement (Pen. Code, § 12022.1). On count 1, the court imposed a consecutive term of 16 months (one-third of the term of four years). The court imposed middle-term sentences on the remaining counts and ordered them to run concurrently to the term imposed on count 3. The gang enhancements (on all counts but count 3) were stayed under Penal Code section 654. The court imposed various fines and fees and awarded Hill 156 days of custody credit.

Hill timely filed a notice of appeal.

DISCUSSION

I. *Hill's Claims Regarding His Convictions*

A. *Sufficient Evidence Supports Hill's Conviction on Count 1*

Hill argues that there was insufficient evidence to support the jury's verdict that he sold drugs on October 8, 2013 to the informant. We disagree.

In evaluating a challenge to a conviction based on the insufficiency of the evidence, we do not reweigh the evidence. Rather, we "examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We presume in "support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." (*Ibid.*)

Hill contends that the evidence was insufficient because the informant's identification of him was unlikely to be true for multiple reasons. First, because the informant would want to curry favor with the police, he argues that her testimony should

be discounted, particularly in light of the contradictions between her testimony and that of Officer Owens. Second, the informant's identification of Hill from a single photograph was so suggestive that it is not worthy of belief. Third, Hill argues that, because his witnesses testified that several people in Nickerson Gardens used the nickname "Melly" or "Melly Mel," connecting him to the sale because someone called out "Melly Mel" during the buy, undermines Hill's identification as the seller of the narcotics. We disagree.

"The testimony of one witness, unless it is physically impossible or inherently improbable, is sufficient to support a conviction." (*People v. Provencio* (1989) 210 Cal.App.3d 290, 306.) The jury may believe and accept as true only part of a witness's testimony and disregard the rest. Weaknesses, inconsistencies or contradictions between one witness's testimony and that of others does not require reversal. (*People v. Allen* (1985) 165 Cal.App.3d 616, 623.) On appeal, we must accept that part of the testimony which supports the judgment. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.)

Here, the informant's eyewitness testimony was not incredible or impossible and the contradictions between her testimony and that of Officer Owens can be explained by the different locations from which they viewed the event. Any claim that the single photograph was suggestive is undercut by the fact that the photo was shown to the informant shortly after the incident when her memory was still fresh and her identification was unequivocal. (*People v. Savala* (1981) 116 Cal.App.3d 41, 49-50 [noting that two factors in determining whether a pretrial identification was unnecessarily suggestive are the level of certainty demonstrated by the witness at the time of identification and the length of time between the crime and the identification].) Further, the jury was free to discount the testimony of defendant's witnesses regarding nicknames. In any event, even if the jury believed that others in Nickerson Gardens also used the nickname "Melly Mel," sufficient evidence supports that it was Hill, not some other "Melly Mel," to whom the person at the window called.

B. *The Court Did Not Err in Sustaining Respondent's Privilege Claim*

During the cross-examination of the informant, defense counsel asked where on her body the hidden video camera was located during the drug purchase. The prosecutor objected under Evidence Code section 1040, and, after hearing argument from both parties outside the presence of the jury, the court sustained the prosecutor's claim of privilege.

Hill argues on appeal that the court erred because (1) placement of the video camera was not privileged, and (2) even if it was privileged, the court should have struck the testimony of the informant or made an "adverse order" on the subject because the placement of the camera was material to the defense under Evidence Code section 1042, subdivision (a). We reject both arguments.

In evaluating a claim of privilege in connection with a surveillance location, the trial court determines if "the agency's need for continued secrecy *of that particular location* outweighs the defendant's need for it to be disclosed in the normal course of a criminal prosecution." (*In re Marcos B.* (2013) 214 Cal.App.4th 299, 312.)

Here, the court correctly determined that the location of the camera on the informant's body was privileged because disclosure of it put ongoing investigations at risk. Specifically, Officer Kellogg testified that all his informants in Nickerson Gardens, who continually made drug purchases on behalf of LAPD, were equipped with similar cameras. Accordingly, disclosure of the camera's location could jeopardize informants' safety and ability to purchase drugs if drug dealers knew the precise location of their surveillance equipment. (See, e.g., *People v. Haider* (1995) 34 Cal.App.4th 661, 666 [disclosure of surveillance location would likely endanger occupants of the building whose rooftop was used for surveillance and would impair further investigation of narcotics offenses]; *People v. Walker* (1991) 230 Cal.App.3d 230, 235 (*Walker*) [disclosure of hidden observation post would likely destroy the future value of location for police surveillance and threaten the safety of officers using the post].)

That, however, does not necessarily end the inquiry. If the court makes the determination of privilege, a defendant has the opportunity to establish that the privilege

is outweighed by the necessity to disclose "material" evidence. (Evid. Code, § 1042, subd. (a).) And, if a defendant meets that burden, the court must strike the testimony in question or make an appropriate adverse order on the subject. "Except where disclosure is forbidden by an act of the Congress of the United States, if a claim of privilege under this article by the state or a public entity in this state is sustained in a criminal proceeding, the presiding officer shall make such order or finding of fact adverse to the public entity bringing the proceeding as is required by law upon any issue in the proceeding to which the privileged information is material." (*Ibid*.)

By its plain terms, Evidence Code section 1042 does not require an adverse order or finding whenever a privileged surveillance location is relevant. It requires such measures only when the defendant establishes that the information sought is material. " '[T]he test of materiality is not simple relevance; it is whether the nondisclosure might deprive defendant of his or her due process right to a fair trial. [Citation.]' " (*People v. Lewis* (2009) 172 Cal.App.4th 1426, 1441.) As we have noted in prior cases, a defendant must show more than "a mere suspicion" that the information sought will prove "relevant and helpful" to his defense; it must be "essential" to a fair determination." (*People v. Acevedo* (2012) 209 Cal.App.4th 1040, 1055, internal quotations omitted.)

Hill has failed to meet this burden. His argument before the trial court and on appeal is that the location of the video camera was material because it could undercut the informant's assertion that she saw Hill's face because "[i]f the camera was located in her head, for example—in her hair, in her eyeglasses, in a hat, in an earring—the camera too should have 'seen' [Hill's] face and captured his image."

This argument is speculative, or based on "mere suspicion." (*Acevedo*, *supra*, 209 Cal.App.4th at p. 1055.) There is no reason to assume that a camera in any of the locations proposed by defendant would have been able to capture Hill's face when the informant looked up to the window. Indeed, in order to do so, the camera would have

needed to track the informant's eye movement or gaze. We have reviewed the video, and it is evident that the camera did not track the informant's eye movement or gaze.[4]

Given the speculative nature of Hill's materiality claim, Hill failed to meet his burden of demonstrating that non-disclosure of the camera's location deprived him of a fair trial. (*Walker*, *supra*, 230 Cal.App.3d at p. 238.) Further, the court mitigated any potential unfairness by granting Hill's request to ask the informant questions regarding why there was no image of Hill on the video.[5] Accordingly, the trial court did not err when it sustained the People's privilege objection.

C. *Sufficient Evidence Supports the Gang Enhancements*

Hill argues that there was no substantial evidence that his drug-related crimes were done with the specific intent to benefit the Bounty Hunter Bloods. We disagree.

To subject a defendant to a gang enhancement, pursuant to Penal Code section 186.22, subdivisions (b)(1), "the prosecution must prove that the underlying crime was 'committed for the benefit of, at the direction of, or in association with, any criminal street gang' (the gang-related prong), 'with the specific intent to promote, further, or assist in any criminal conduct by gang members' (the specific intent prong). [Citations.]" (*People v. Rios* (2013) 222 Cal.App.4th 542, 564, fn. omitted.) Expert opinion that particular criminal conduct was done to benefit a gang can be sufficient to support the Penal Code section 186.22, subdivision (b)(1), gang enhancement. (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.)

Here, according to gang expert Officer Coughlin, the Bounty Hunter Bloods gang, of which Hill was a member, was in the business of and had monopoly control over the Nickerson Gardens' drug trade. Only gang members could sell drugs in Nickerson

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[4] On appeal, even Hill describes the camera as pointing "up, down, and to the side." The rapid change in perspective of the camera further illustrates the speculative nature of Hill's claim that the camera location was essential to his defense.

[5] Hill's counsel asked: "Do you have any explanation as to why you weren't able to capture the defendant's face on the video?" The informant replied: "No." Hill's attorney made no further inquiries regarding the camera.

Gardens. The narcotics business was extremely profitable for the gang and benefitted it by "employ[ing] hundreds of its gang members annually," thereby eliminating the need for gang members to seek lawful employment. The drug trade also benefitted the gang by enabling its members to purchase guns to protect their product, eliminate rivals, and place the Nickerson Gardens residents in a position of fear, allowing the gang to have a "stranglehold over the community with [its] narcotics trade." Under these circumstances a jury could reasonably conclude that as a gang member dealing drugs in Nickerson Gardens, Hill worked for the benefit of the gang.

D. *No Prejudicial Error Occurred from Handcuffing Hill After the First Guilty Verdict Was Read and at the Post-Trial Hearings*

Hill contends that the trial court abused its discretion and committed prejudicial error by allowing law enforcement personnel in the courtroom to handcuff him during the reading of the jury verdicts and at the post-trial hearings without a showing of necessity. We disagree.

Generally, a defendant "cannot be subjected to physical restraints of any kind in the courtroom while in the jury's presence, unless there is a showing of a manifest need for such restraints." (*People v. Duran* (1976) 16 Cal.3d 282, 290-291.) Our Supreme Court has, however, "consistently held that courtroom shackling, even if error, was harmless if there is no evidence that the jury saw the restraints, or that the shackles impaired or prejudiced the defendant's right to testify or participate in his defense." (*People v. Anderson* (2001) 25 Cal.4th 543, 596; see, e.g., *People v. Ervine* (2009) 47 Cal.4th 745, 773-774 [no prejudice where record did not reveal that defendant's shackling impaired his ability to communicate with counsel or participate in his defense].)

Here, Hill was handcuffed after the court clerk announced the guilty verdict as to count 1, and he remained handcuffed for the rest of the reading as to the other counts.[6] He was also handcuffed during the hearings regarding his motion for new trial and sentencing. After the jury was dismissed, Hill's attorney raised the issue of the handcuffing to the court. The court then explained that the sheriff department's imposition of handcuffs was customary, and not particular to Hill, even noting that Hill was "a perfect gentleman in this court." This handcuffing, without the requisite showing of need, was in error. However, any error was harmless and did not prejudice Hill.

As for the handcuffing during the reading of the verdict, prior to reaching the verdict the jury deliberated for less than two hours. It had completed and submitted its written verdict forms, the jury foreperson had acknowledged in open court that the jury had reached a decision as to all counts, and the court clerk had read the jury's guilty verdict as to count 1. Under these circumstances, where a guilty verdict was announced in open court, it is highly unlikely that any juror was planning to change his or her individual verdict during polling, but was persuaded not do so based on Hill's handcuffing.

As for the handcuffing during post-trial hearings before the court, Hill does not claim, nor do we adduce from our independent review of the record, that his handcuffing during the hearings on his motion for a new trial and sentencing impacted, let alone impaired, his ability to communicate with counsel or participate in his defense.

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[6] It is unclear from the record if any juror saw Hill being handcuffed or noticed that he was wearing handcuffs during the reading of the verdict. The record is also silent as to the amount of time Hill was handcuffed in front of the jury. We will assume, for purposes of this appeal, that a juror might have noticed the handcuffs during the brief period of time it took to finish reading the verdicts and poll the jury, prior to the jury being excused.

II. *Hill's Claims Regarding Sentencing*

A. *Hill Should Be Resentenced Under the Amended Versions of Section 11351.5*

The parties are in accord that Hill was improperly sentenced to the middle term of four years on count 6 (possession for sale of cocaine), rather than the three-year middle term currently set forth in section 11351.5, as amended effective January 1, 2015. This amendment was intended to mitigate punishment and there is no saving clause; it therefore operates retroactively so that the lighter sentence should be imposed. (*People v. Keith* (2015) 235 Cal.App.4th 983, 985.) We agree and remand the case for resentencing.

B. *The Sentences on Counts 6 and 7 Should Be Stayed Under Penal Code Section 654*

The parties also agree that the sentences on count 6 (possession for sale of cocaine base) and count 7 (possession for sale of cocaine) should have been stayed under Penal Code section 654 because Hill was sentenced in count 3 (transportation of cocaine base) and count 4 (transportation of cocaine) for transportation of the same narcotics at issue in counts 6 and 7. We agree.

Section 654 prohibits punishment for two crimes arising from a single, indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) If all of the crimes were merely incidental to, or were the means of accomplishing or facilitating one objective, a defendant may be punished only once. (*Ibid*.) Where section 654 precludes sentencing on a given count, the sentence may be imposed and stayed, but may not be concurrent. (*People v. Pena* (1992) 7 Cal.App.4th 1294, 1312.) Here, it appears Hill committed the offenses in counts 3, 4, 6 and 7 pursuant to an indivisible course of conduct—the transportation and possession of cocaine and cocaine for the purpose of sale. Accordingly, the sentences on counts 6 and 7 should have been stayed, and we remand to the trial court in order for it to do so.

C. *The Trial Court Could Only Impose One Recidivist Enhancement and One Prior Drug Conviction Enhancement on a Determinate Sentence*

The parties further agree that enhancements that go to the nature of the offender, such as a prior conviction enhancement (e.g., Pen. Code, § 12022.1), can only be imposed once on a determinate sentence, regardless of the number of new felony offenses. (*People v. Williams* (2004) 34 Cal.4th 397, 402.) Similarly, a prior drug conviction enhancement under section 11370.2 can only be imposed once on a determinate sentence. (*People v. Thomas* (2013) 214 Cal.App.4th 636, 640.) Accordingly, we remand the case in order for the trial court to strike the unauthorized enhancements pursuant to Penal Code section 12022.1 and section 11370.2 as to every count except count 3.

D. *The Case Should Be Remanded to Allow the Trial Court to Either Impose or Strike the Gang Enhancements*

The parties agree that the trial court improperly stayed the gang enhancement as to all the counts (except count 3) pursuant to section 654. Under Penal Code section 186.22, subdivision (b), the trial court is without authority to stay gang enhancements. (*People v. Vega* (2013) 214 Cal.App.4th 1387, 1396.) Instead, the trial court must either impose or strike the gang enhancement on the remaining counts, pursuant to section 186.22, subdivision (g), and state its reasons for doing so. (*People v. Vega*, supra, 214 Cal.App.4th at p. 1397.) We remand the case to the trial court for resentencing so it may either impose or strike the gang enhancements as to all the counts other than count 3. If the court chooses to strike the enhancements, it should " 'specify[] on the record and enter[] into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.' " (*Ibid.*)

DISPOSITION

The judgment of conviction is affirmed, and the matter is remanded for resentencing in accordance with this opinion, specifically: (1) Hill's sentence should be reduced on count 6 from four years to three years; the sentence on counts 6 and 7 should be stayed pursuant to Penal Code section 654; (3) the enhancements pursuant to Penal Code section 12022.1 and section 11370.2 should be struck as to every count except count 3; and (4) the trial court should determine whether to strike the gang enhancements as to all counts other than count 3, and, should it decide to strike the enhancements, it should state its reasons for doing so.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.